



24 APR 2007

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In re Application of
FRIDMAN, et al.
U.S. Application No.: 10/560,537
PCT No.: PCT/US04/19590
Int. Filing Date: 18 June 2004
Priority Date: 20 June 2003
Attorney Docket No.: DREX-1002US
For: VORTEX REACTOR AND METHOD OF
USING IT.

DECISION ON PETITION

37 CFR 1.181

This decision is in response to applicant's request for refund of extension of time payment based on non-receipt of Office action filed 21 April 2007 in the United States Patent and Trademark Office (USPTO). The petition is being treated under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 18 June 2004, applicant filed international application PCT/US04/19590, which claimed priority of an earlier application filed 20 June 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 20 December 2005.

On 13 December 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 02 August 2006, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide a signed oath or declaration of the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date.

On 28 February 2007, applicant filed a response including an executed declaration of the inventors, payment of the appropriate surcharge for late submission of an executed oath or declaration of the inventors and a request for a five-month extension of time.

On 12 April 2007, applicant filed the petition considered herein requesting a refund of the five-month extension of time fee payment.

DISCUSSION

The Manual of Patent Examining Procedure (MPEP) at 711.03(c) and the Official Gazette, at 1156 OG 53, provides that a petition requesting relief based on the grounds that an Office action was not received must be accompanied by a statement that (1) the Office action was not received, (2) attests that a search of the file jacket indicates the Office action was not received, (3) attests that a search of counsel's docket records indicates the Office action was not received and (4) the Petition must also be accompanied by copies of the docket records where the non-received Office action would have been entered. (See also, *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971). Applicant has satisfied all items listed above showing that the Form PCT/DO/EO/905 mailed 02 August 2006 was not received. As such, it is proper to grant applicant's petition at this time and refund the \$1,080.00 extension of time fee payment to deposit account number 50-0462.

CONCLUSION

Applicant's Petition Under 37 CFR 1.181 is **GRANTED**.

This application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision, namely consideration of applicant's 28 February 2007 response.



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